

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**In Re: AUTOMOTIVE PARTS
ANTITRUST LITIGATION**

**Case No. 12-md-02311
Honorable Marianne O. Battani**

In Re: SMALL BEARINGS CASES

**THIS DOCUMENT RELATES TO:
ALL DIRECT PURCHASER ACTIONS**

**2:17-cv-04201-MOB-MKM
2:17-cv-10853-MOB-MKM**

**MOTION FOR AUTHORIZATION TO DISSEMINATE NOTICE
TO DIRECT PURCHASER SETTLEMENT CLASS OF PROPOSED
SETTLEMENT WITH MINEBEA DEFENDANTS AND REQUEST
FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

Direct Purchaser Plaintiff hereby moves the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for authorization to disseminate notice to the Direct Purchaser Minebea Settlement Class of a proposed settlement with Defendants MINEBEA MITSUMI Inc., NMB (USA), Inc., and NMB Technologies Corporation (collectively, “Minebea”), and Settlement Class Counsel’s request for attorneys’ fees and reimbursement of expenses. In support of this motion, Plaintiff relies upon the accompanying memorandum of law, which is incorporated by reference herein.

The parties do not request a hearing for this motion. Minebea consents to this motion and to the entry of the proposed order authorizing notice to the Minebea Settlement Class.

DATED: October 23, 2017

Respectfully submitted,

/s/David H. Fink

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**2:17-cv-04201-MOB-MKM
2:17-cv-10853-MOB-MKM**

**BRIEF IN SUPPORT OF MOTION FOR AUTHORIZATION TO DISSEMINATE
NOTICE TO DIRECT PURCHASER SETTLEMENT CLASS
OF PROPOSED SETTLEMENT WITH MINEBEA DEFENDANTS AND
REQUEST FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

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STATEMENT OF ISSUE PRESENTED

Whether the Court should authorize the dissemination to members of the Minebea Settlement Class of notice of the proposed settlement and the request for an award of attorneys' fees and reimbursement of litigation costs and expenses?

Suggested Answer: Yes

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Fed. R. Civ. P. 23(c)(2)(B)

Fed. R. Civ. P. 23(e)(1)

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306 (1950)

In re: Packaged Ice Antitrust Litig., No. 08-MD-01952, 2011 WL 717519 (E.D. Mich. Feb. 22, 2011)

UAW v. General Motors Corp., 497 F.3d 615 (6th Cir. 2007)

I. INTRODUCTION

On May 23, 2017, the Court preliminarily approved a proposed \$9,750,000 settlement¹ with Defendants MINEBEA MITSUMI Inc., NMB (USA), Inc., and NMB Technologies Corporation (collectively, “Minebea” or the “Minebea Defendants”), and provisionally certified a Direct Purchaser Minebea Settlement Class. (2:17-cv-10853, Doc. No. 14). Plaintiff now moves the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order (the “Notice Order”), in substantially the form submitted herewith:

1. approving the proposed forms of notice of the settlement with the Minebea Defendants (attached as Exhibits A and B);
2. directing that notice of the proposed settlement be disseminated to members of the Minebea Settlement Class;
3. establishing a deadline for filing papers in support of the proposed settlement and Settlement Class Counsel’s request for an award of attorneys’ fees and reimbursement of litigation costs and expenses;
4. establishing a deadline for requests for exclusion from the Settlement Class;
5. establishing a deadline for filing objections to the proposed settlement and the request for an award of attorneys’ fees and reimbursement of litigation costs and expenses; and
6. establishing a date for a hearing on final approval of the proposed settlement and the request for an award of attorneys’ fees and reimbursement of litigation costs and expenses.

¹ The Settlement Agreement provides that Minebea may rescind the Settlement Agreement if valid and timely requests for exclusion by members of the Settlement Class exceed a specified threshold. The details of the possible rescission are set forth in a confidential letter agreement that will be provided to the Court for *in camera* review upon its request. Plaintiff will provide the Court with a report on opt-outs, if any, after the opt-out deadline, and prior to the Fairness Hearing.

The proposed Notice Order includes the provisions and procedures necessary to obtain final approval of the proposed settlement as required by Rule 23(e) of the Federal Rules of Civil Procedure. Plaintiff respectfully requests that the Court authorize dissemination of notice of the proposed settlement with the Minebea Defendants to members of the Settlement Class and establish a schedule for final approval of the proposed settlement and fee request.

II. PROPOSED TIMETABLE

Plaintiff proposes the following schedule for final approval of the Minebea settlement:

1. Within 15 days of the date of entry of the Notice Order, the Notice of Proposed Settlement of Direct Purchaser Class Action with Minebea Defendants and Hearing on Settlement Approval (“Notice”) (attached Exhibit A) shall be mailed by first class mail, postage prepaid, to all potential members of the Minebea Settlement Class identified by the Minebea Defendants and the NSK Defendants, and shall be posted on the Internet at www.autopartsantitrustlitigation.com, the website dedicated to this litigation;

2. Within 25 days of the date of entry of the Notice Order, the Summary Notice of Proposed Settlement of Direct Purchaser Class Action with Minebea Defendants and Hearing on Settlement Approval (“Summary Notice”) (attached as Exhibit B), shall be published in one national edition of *The Wall Street Journal* and in one edition of *Automotive News*;

3. Within 45 days of the date of entry of the Notice Order, Settlement Class Counsel shall file with the Court their motion or motions seeking final approval of the proposed settlement with Minebea and an award from the Minebea Settlement Fund of attorneys’ fees and reimbursement of litigation costs and expenses;

4. All requests for exclusion from the Minebea Settlement Class must be in writing, postmarked no later than 65 days from the date of entry of the Notice Order, and must otherwise comply with the requirements set forth in the Notice;

5. All objections by any member of the Minebea Settlement Class to the proposed Minebea settlement, or to the request for an award of attorneys' fees and reimbursement of litigation costs and expenses, must be in writing, must be filed with the Clerk of Court and postmarked no later than 65 days from the date of the Notice Order, and must otherwise comply with the requirements set forth in the Notice;

6. At least 10 days before the date fixed by the Court for the fairness hearing, Settlement Class Counsel shall file with the Court affidavits or declarations of the person under whose general direction the mailing and posting of the Notice, and publication of the Summary Notice, were made, showing that mailing, posting and publication were made in accordance with the Notice Order; and

7. The fairness hearing on final approval of the proposed settlement and the request for an award of attorneys' fees and reimbursement of litigation costs and expenses shall be scheduled at the Court's convenience on a date on or after 100 days from the date of entry of the Notice Order.

III. THE NOTICE PROGRAM SHOULD BE APPROVED

Federal Rule of Civil Procedure 23(e)(1) provides that a court must direct notice in a "reasonable manner" to all class members who would be bound by a proposed settlement. Rule 23(e) notice must contain a summary of the litigation sufficient "to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections." *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 629 (6th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

For class actions certified under Rule 23(b)(3), the court must also "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). In

addition, the notice must clearly and concisely state: (1) the nature of the action; (2) the class definition; (3) the class claims, issues, or defenses; (4) that a class member may enter an appearance through counsel; (5) that the court will exclude from the class any member who validly requests exclusion; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on class members under Rule 23(c)(3). *Id.*

The notice program and forms of notice proposed by Plaintiff satisfy these requirements. The proposed Notice sets forth all information required by Rule 23(c)(2)(B) and 23(e)(1), and also appraises Settlement Class members that Settlement Class Counsel will seek an award of attorneys' fees and litigation expenses. The Notice will be disseminated by first class mail, postage prepaid, to all entities identified by Defendants as potential Settlement Class members. The Notice will also be provided to all persons who request it in response to the Summary Notice. In addition, copies of the Notice will be posted on the website dedicated to this litigation. The Summary Notice will be published in one national edition of *The Wall Street Journal* and in one edition of *Automotive News*.²

Plaintiff believes that the content of and proposed method for dissemination of notice fulfill the requirements of Federal Rule of Civil Procedure 23 and due process and thus merit approval by the Court. See *In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 WL 717519, at *5 (E.D. Mich. Feb. 22, 2011).

² The proposed notice program and forms of notice have been approved by the Court in connection with other settlements in the auto parts litigation, including in *Wire Harness Products* (2:12-cv-00101, Doc. Nos. 162, 319, 320), in *Instrument Panel Clusters* (2:12-cv-00201, Doc. No. 91), and in *Occupant Safety Systems* (2:12-cv-00601, Doc. Nos. 97, 116).

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court authorize dissemination of notice and schedule a fairness hearing on the Minebea settlement and the request for an award of attorneys' fees and reimbursement of litigation costs and expenses.

DATED: October 23, 2017

Respectfully submitted,

/s/David H. Fink

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2017, I electronically filed the foregoing paper with the Clerk of the court using the ECF system, which will send notification of such filing to all counsel of record registered for electronic filing.

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